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Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, on his mission to the Sudan

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights on his official visit to the Sudan from 23 to 30 November 2015. The focus of his visit was on the negative impact that unilateral coercive measures imposed by States or groups of States may have on the rights that the Special Rapporteur identified in his reports to the Human Rights Council (A/HRC/30/45) and the General Assembly (A/70/345).

During his visit, the Special Rapporteur met with a wide range of high-ranking government officials, businessmen, academics and representatives of United Nations agencies and civil society.

In the present report, the Special Rapporteur gives an overview of the unilateral coercive measures imposed on the Sudan and their impact on the enjoyment of basic human rights. Then reviews the options to address the related challenges. On that basis, the Special Rapporteur addresses his recommendations to the Sudan, source countries, the United Nations system and other stakeholders. He proposes a step-by-step approach to removing unilateral coercive measures, starting with those with the most severe impact on the enjoyment of human rights. In the meantime, the mandate holder would use quiet diplomacy to facilitate channels of communications between source and target countries to build a common ground.

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Report of the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, on his mission to the Sudan

I. Introduction

1. The Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, undertook an official visit to the Sudan from 23 to 30 November 2015 to assess the negative impact that unilateral coercive measures imposed by States or group of States have on the ground.

2. During his visit, the Special Rapporteur met the Vice President of the Republic, the Minister for Foreign Affairs, the Minister for Justice, the Minister for Finance and the National Economy, the Minister for Industry, the Minister for Petroleum and Gas, the Minister for Health, the Minister for Culture, the Minister for Labour and Administrative Reform, the Minister for Infrastructure and Transport for Khartoum and the State Minister for Communications. He also met with senior officials of the ministries of trade, transport, education and higher education, water resources, roads and bridges, and social security. The Special Rapporteur was also received by the President of the National Assembly and by a number of leaders from different political parties and social movements. He held a meeting with members of the National Commission for Human Rights and with the heads of national institutions responsible for the El Gezira project, the National Medicines and Poisons Board, the Khartoum Radiation and Isotopes Centre, the Khartoum breast care centre and the Gum Arabic Centre.

3. The Special Rapporteur held consultations with representatives of the Sudanese employers' union and the Sudanese American Business Council. He also met with representatives of civil society organizations, the Sudanese trade union, and experts and academics.

4. The Special Rapporteur also met with the Resident Coordinator of the United Nations in Khartoum and representatives of other United Nations agencies concerned. In addition, he consulted different diplomatic representatives of States from Europe, Asia, Africa and the Americas, and of regional organizations. He was not able to meet with the representative of the United States of America in Khartoum. Nonetheless, the information on unilateral coercive measures taken by the United States against the Sudan has been shared for factual correction with the Permanent Mission of the United States to the United Nations Office at Geneva, which provided some comments and observations on 22 July 2016.

5. The Special Rapporteur expresses his gratitude to the Government of the Sudan for its invitation and the support provided throughout the visit. He also thanks the Resident Coordinator of the United Nations in Khartoum and her staff for their invaluable cooperation and assistance.

II. Overview of coercive measures in force against the Sudan

6. The Sudan is currently subject to different kinds of international sanctions; although some have been imposed by the Security Council and are therefore beyond the scope of the mandate of the Special Rapporteur. Their characteristics will be recalled briefly in order to

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provide a full picture of the current situation. Other sanctions against the Sudan qualify as unilateral coercive measures. Even though most have been imposed by the United States of America and Canada, they have de facto been applied by the European Union and a number of financial institutions and other businesses based in other countries and that have dealings with the United States. The penalties applied on 30 June 2014 by the Department of the Treasury of the United States against the French bank BNP Paribas for non-compliance with American legislation concerning unilateral coercive measures against the Sudan, through an internationalization of internal legislation, have had a further chilling effect on the business partners of the Sudan.[1] As a result, the Sudan is now de facto under global and comprehensive unilateral coercive measures, which have an adverse impact on all segments of the population, in particular the most vulnerable, such as women, children and the ill (especially those suffering from diabetes and cancer).

A. Security Council sanctions

7. The Security Council imposed sanctions on the Sudan in 1996 and 2004. In 1996, the Council, in its resolution 1044 (1996), imposed a reduction of number and level of staff at Sudanese diplomatic missions and consular posts, and restrictions or control of movement on the remaining staff. It also imposed travel restrictions on members of the Government of the Sudan, government officials and members of the Sudanese armed forces. The Council also called upon all international and regional organizations not to convene any conference in the Sudan. Later in 1996, the Council, in its resolution 1070 (1996), imposed an aviation ban on aircraft registered in the Sudan or owned, leased or operated by, or on behalf of Sudan Airways, the Government or the public authorities of the Sudan. In 2001, in its resolution 1372 (2001), the Council revoked diplomatic sanctions and the aviation ban.

8. In 2004, the Security Council began to introduce an arms embargo on the Sudan[2] and also to take other targeted measures (such as a travel ban and an assets freeze on certain individuals).[3]

9. At present, four individuals appear on the list compiled by the Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan: two senior officers of the Sudanese armed forces (one retired), one tribal chief and one senior member of a political party. No entity is currently listed.

B. Unilateral coercive measures imposed by the United States of America

10. The United States of America has by far the broadest sanctions regime against the Sudan in the world. Since 1997, it has maintained economic sanctions against the Sudan under the International Emergency Economic Powers Act. The alleged acts triggering the measures include the policies and actions of the Government of the Sudan, "including support for international terrorism", "efforts to destabilize neighbouring Governments, and

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[1] The text of the Settlement Agreement between the Office of Foreign Assets Control of the United States Treasury and BNP Paribas dated 30 June 2014 is available from https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20140630_bnp_settlement.pdf.

[2] See Graduate Institute Geneva, SanctionsApp (available from www.sanctionsapp.com).

[3] See Security Council resolutions 1556 (2004), 1564 (2004), 1590 (2005), 1591 (2005), 1593 (2005), 1651 (2005), 1665 (2006), 1672 (2006), 1706 (2006), 1713 (2006), 1779 (2007), 1841 (2008), 1891 (2009), 1945 (2010), 1982 (2011), 2035 (2012), 2091 (2013), 2138 (2014) and 2200 (2015).

involvement in pervasive human rights violations". According to the Office of Foreign Assets Control, the ultimate objective of sanctions is "behavioral change".[3]

11. The sanctions "programme" against the Sudan began in 1997, when President Clinton issued Executive Order 13067, which imposed a comprehensive trade embargo on the Sudan and froze the assets of the Government. In 2006, President Bush expanded the scope of the sanctions in Executive Order 13400, which targeted those involved in the conflict in Darfur. Later that year, the President issued Executive Order 13412, which exempted the regional Government of Southern Sudan and certain specified areas from most of the prohibitions imposed by the sanctions regime. Following the independence of South Sudan in July 2011, the Office of Foreign Assets Control authorized all activities relating to the petroleum and petrochemical industries in South Sudan, to the extent they were otherwise prohibited, and the transshipment of goods, technology and services through the Sudan to or from South Sudan.[4]

12. The most significant unilateral coercive measures targeting the Sudan therefore comprise the blocking of properties of the Government of the Sudan, and a trade embargo. Pursuant to Executive Orders 13067 and 13412, all property and interests in property of the Government of the Sudan have been frozen. They also prohibit, with certain exceptions:

- The importation of goods or services of Sudanese origin
- The exportation or re-exportation to the Sudan of goods, technology or services from the United States or by a United States person[5]
- The facilitation by a United States person of the exportation or re-exportation of goods, technology or services from the Sudan to any destination or to the Sudan from any location
- The performance by a United States person of any contract in support of an industrial, commercial or public utility, or governmental project, in the Sudan
- The grant or extension of credits or loans by a United States person to the Government of the Sudan
- Certain transactions relating to cargo to or from the Sudan
- All transactions by United States persons relating to the petroleum or petrochemical industries in the Sudan, including oilfield services and oil or gas pipelines

13. In addition, the United States applies sanctions targeted against individuals and entities considered having contributed to the conflict in the Darfur region. To the extent that these measures apply to the individuals designated by the Security Council Committee established pursuant to resolution 1591 (2005), they qualify as implementation measures of Security Council resolutions, not as unilateral coercive measures. It should be noted, however, that, pursuant to Executive Order 13400, the United States Secretary of the Treasury is empowered to make additional designations, after consultation with the Secretary of State, of persons deemed:

(a) To have constituted a threat to the peace process in Darfur;

[3] Office of Foreign Assets Control, Effectiveness of U.S. Economic Sanctions with respect to Sudan: report to Congress, January 2009, p. 7.

[4] Office of Foreign Assets Control, Sudan sanctions program, 5 November 2013.

[5] According to Executive Order 13412, "the term 'United States person' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States."

(b) To have constituted a threat to stability in Darfur and the region;

(c) Responsible for conduct relating to the conflict in Darfur that violates international law;

(d) Responsible for heinous conduct with respect to human life or limb in the context of the conflict in Darfur;

(e) To have directly or indirectly supplied, sold or transferred arms or any related materiel, or given any assistance, advice or training relating to military activities to:

(i) The Government of the Sudan;

(ii) The Sudan Liberation Movement/Army;

(iii) The Justice and Equality Movement;

(iv) The Janjaweed;

(v) Any person operating in the States of North Darfur, South Darfur or West Darfur that is a belligerent, a non-governmental entity or an individual;

(f) Responsible for offensive military overflights in and over the Darfur region;

(g) To have materially assisted, sponsored or provided financial, material or technological support for, or goods or services in support of, the activities described in subparagraph (a) to (f) above or any person listed in or designated pursuant to this order;

(h) To be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person listed in or designated pursuant to the order.

14. To the extent that additional designations are made "autonomously" by United States authorities pursuant to Executive Order 13400, they qualify as unilateral coercive measures given that they have not been mandated by the Security Council. Dozens of such entities and individuals are apparently listed by the Office of Foreign Assets Control in its Specially Designated Nationals and Blocked Persons Lists, marked "Darfur" or "Sudan".

15. Certain types of activities and transactions are exempt from the prohibition of the sanctions regime and the executive orders, such as the donation of articles intended to relieve human suffering (for example, food, clothing or medicine). The importation from and exportation to the Sudan of information or informational materials, whether commercial or otherwise, and regardless of format or medium of transmission, are also exempt from the prohibitions and regulations. In addition, some "specified areas" of the Sudan, namely Southern Kordofan State (Nuba Mountains), Blue Nile State, Abyei, Darfur, and some areas in and around Khartoum that the United States defines as "marginalized", are exempt from most United States sanctions. The Department of the Treasury of the United States also grants some "general licenses", one of which allows United States citizens to export food products to these "specified areas" under certain conditions.

16. After the visit of the Special Rapporteur to the Sudan, the Department of the Treasury, in consultation and coordination with the Departments of State and Commerce, issued an amended general license relating to the exportation, re-exportation and provision to the Sudan of certain hardware, software and services incident to personal communications, effective 18 February 2016.

C. Unilateral coercive measures imposed by other States and organizations

1. Canada

17. In addition to domestic implementation measures of the sanctions mandated by the Security Council, Canada currently applies a number of unilateral coercive measures targeting the Sudan "in response to the government's role in the country's conflicts, and in support of Canada's policy in this country".[7] The measures include withholding commercial support services, such as export finance and trade and investment development activities, and Government-to-Government development cooperation.[8]

2. European Union

18. Although the European Union imposes its own sanctions to a number of States, subject to review at regular intervals and adjusted as deemed necessary, in accordance with developments affecting the stated objectives and the effectiveness of the measures,[9] it does not at present impose unilateral coercive measures on the Sudan. Nonetheless, firms based in the European Union with business relations with the United States comply systematically with the unilateral coercive measures imposed by the United States against the Sudan.

19. The European Union is currently negotiating an economic partnership agreement with a number of Eastern African States, including the Sudan. This group of States does not recognize the applicability of American domestic law concerning unilateral coercive measure to European firms; nonetheless, the European Union has not been able to protect the firms from the huge fines imposed, in particular on the banking sector, for conducting business relations with Sudanese partners. With regard to sanctions, the European Union officially implements, through instruments of European law, only Security Council resolution 1591 (2005) and subsequent relevant resolutions, which provide for an arms embargo, a travel ban and the freezing of assets of certain individuals "of concern" designated by the Council. The travel bans enforced by the European Union - preventing entry to or transit through the territory of member States of listed individuals - and the asset freeze currently concern only the four individuals listed by the Security Council Committee established pursuant to resolution 1591 (2005).

3. Other States

20. Through a review of open-source information on unilateral coercive measures imposed by the "source countries" most active in their application, the Special Rapporteur has identified a large number of firms from most countries in the world (other than the United States of America and Canada), including Arab States that are members of the Gulf Cooperation Council and the Bank of China, that refuse to honour letters of credit issued by the Sudan. Such a situation is understandable for letters of credit in United States dollars, but less clear when payments are made in other currencies. This unfortunate situation is not necessarily a result of the adoption of legal provisions to apply unilateral coercive measures against the Sudan, but to avoid major penalties imposed by the Department of the Treasury

[7] Embassy of Canada to Sudan, Canada-Sudan relations, 13 April 2015.

[8] Global Affairs Canada, Canadian Sanctions related to Sudan, 18 April 2016.

[9] See European Union External Action, Common Foreign and Security Policy, sanctions policy, at http://eeas.europa.eu/cfsp/sanctions/index_en.htm.

of the United States. The cases of BNP Paribas, which was fined $6.4 billion, Crédit Agricole, $787 million, and Commerzbank, $1.45 billion, stand as a deterrent for all banks worldwide today. Most feel an excessive sense of vulnerability, while the European Union officially protects firms headquartered in Europe against the effects of the extraterritorial application of legislation adopted by a third country [10] it has not protected its own banks when they were sanctioned by the Department of the Treasury for conducting dealings with countries or entities subject to United States sanctions.[11] The result has been the generalization of unilateral coercive measures initially imposed by the United States to all international firms with business interests in the United States. It has even led to cases of over-compliance, whereby firms shun association with the Sudan even for operations considered to be legal or legitimate by the source country.

III. Assessment of the adverse impact of unilateral coercive measures on human rights in the Sudan

21. While preparing his visit and drafting the present report, the Special Rapporteur regretted the lack of updated information on the impact of unilateral coercive measures on human rights in the Sudan. The national household survey, which would have provided valuable information, had to be postponed because the African Development Bank was unable to clear aid transfers to the Sudan for the purposes of conducting the survey.

22. As explained above, unilateral coercive measures targeting the Sudan restrict trade and investment in the country, which in turn forces the population to face enormous challenges to their enjoyment of human rights. Coercive measures affect the right to health and an adequate standard of living, the right to food, the right to education and the right to development.

23. The Special Rapporteur learned from reports that the components of health services most affected are the units of emergency and epidemic response, owing to the lack of vaccines and drugs for the prevention and treatment of infectious diseases. The lack of logistical assistance and technical support, lack of medical equipment and even of computer programmes and components for medical diagnostics are just a few examples of the challenges that the Sudan is facing.

24. The sanctions regime targeting the Sudan include exemptions and general licenses for the health and agricultural sector; however, the exemptions become ineffective when financial transactions with the banking system in the Sudan are prohibited.

25. Sanctions enacted by the United States also affect the right to education. The Special Rapporteur was informed in March 2016 by the Permanent Mission of the Sudan that citizens are deprived of scholarship opportunities and of software and other technology, which would allow them to improve and update resources for teaching and learning.

26. The main negative effect of coercive measures is evident in the case of the right to development, given that the Sudan is deprived of advanced technology and spare parts, which has led to the deterioration of key industries, such as electricity, textile and oil. It has

[10] Council Regulation (EC) No. 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom. See Jurgen Huber, "The Helms-Burton Blocking Statute of the European Union", *Fordham International Law Journal*, vol. 20, 1996, pp. 699–716.

[11] See for example Pierre-Emmanuel Dupont and Regis Bismuth, "The doubtful legality of U.S. extraterritorial sanctions applied to European financial institutions", *Revue internationale des services financiers / International Review of Financial Services*, vol. 1, 2015, pp. 104–108.

also left the State unable to increase the efficiency of exploration, extraction and refining, which has in turn led to higher prices for materials, equipment and machinery used in mining operations.

27. Furthermore, unilateral coercive measures have compounded external debt and affected the realization of development projects, a situation that has resulted in higher costs of living and consequently, higher rates of poverty, while also undermining the ability of the State to address global financial markets.

28. During broad-based consultations held by the Special Rapporteur, all Sudanese partners mentioned agreed on the ineffectiveness of the unilateral coercive measures targeting the Sudan, unchanged for nearly 20 years, and on the need to either lift them or review their content.

29. In this regard, it should be noted that, the Security Council now avoids resorting to comprehensive sanctions in the light of their unintended negative impact on important segments of the population of targeted countries. Given the woeful human rights impact of undiscriminating measures entailed in comprehensive sanctions, the Council has come to resort to sanctions that must be targeted against specific sectors or persons "of concern".

30. Unfortunately, the unilateral coercive measures targeting the Sudan have not followed this trend, given that they have been applied for more than two decades, without any adjustment to the change in the internal context, in recognition of the fact that the situation of 1997 is completely different to the current one.

31. The measures applied to the Sudan have not changed, even after the signing of the Comprehensive Peace Agreement in 2005, nor since the start of the national dialogue; in the meantime, the impact of the measures has fluctuated erratically.

32. The impact of unilateral measures may fluctuate; for example, it became less severe after 2000 following the discovery of oil and consequently the increasing resources available to the Government. It then became heavier when the State lost 75 per cent of oil revenue following the secession of South Sudan and the drop in oil prices. The impact of the measures became even more severe when Crédit Agricole, BNP Paribas and Commerzbank were charged penalties by the source country, leading to a globalization of its restrictions.

33. This all resulted in a stifling embargo on the economy and on Sudanese financial transactions as a result of the interruption of most financial relations of the outside world with the Sudan, at a time when the internal situation in the Sudan was resilient, despite the negative impact of the measures taken against it. The effect of the coercive measures applied therefore ran counter to their proclaimed objectives.

34. The reality on the ground has shown that unilateral coercive measures do not have a significant negative impact on officials or on any elite group, but rather on innocent citizens, causing also a deepening of the gap in income distribution within Sudanese society and among the provinces. The black market has broadened, while the State has broken away from the official control of financial transactions. The emergence of a parallel economy, exposed to a variety of possible illegal practices, has thus been encouraged.

35. While in some sectors it is possible to assess the negative impact of unilateral coercive measures on the enjoyment of human rights in the Sudan, such as health, where impact is clear and unambiguous, in other sectors it may be more difficult to identify the extent of impact separately from other causes of the denial of human rights. The situation has been exacerbated by the continual postponement of the national household survey, which has not been conducted since 2009. Some donor countries complained to the Special Rapporteur that this was due to a lack of responsiveness to the requirements of international financial institutions by the Sudan because of its reluctance to let it be known that the

denial of human rights was mainly due to internal policy shortcomings. On further investigation, however, it emerged that the African Development Bank had set aside some funding for the second and third rounds of data collection for the survey but that transfer restrictions caused by the unilateral coercive measures imposed on the Sudan prevented the bank from disposing of the funds in Khartoum. Ultimately, the Minister for Finance had to draw on contingency funds in the national budget to proceed with the survey.

36. To avoid politicization of the debate over the distinction between causality and correlation in the Sudan, additional studies and more detailed observations are needed.

Observations

37. As mentioned above, the Security Council avoids resorting to comprehensive sanctions because of their catastrophic impact on the enjoyment of human rights, as seen in the cases of Haiti and Iraq. Given their global and comprehensive nature, the unilateral coercive measures targeting the Sudan have not followed the practice of the Council in this regard. In fact, the measures imposed on the Sudan are the last major set of such measures to be still applied at the international level today.

38. In human rights law, the rights most relevant to assessing the legality of economic measures include the right to life,[9] the right to an adequate standard of living, including food, clothing, housing and medical care,[10] the right to freedom from hunger[11] and the right to health.[12] Although the United States of America claims that the sanctions do not apply to health, education and agriculture, they have deeply affected the delivery and availability of medical supplies. The right to education is affected by the freeze on professional exchanges and the lack of access to software and modern technologies. The reduction in agricultural production and productivity as a result of the de facto embargo has had a negative impact on the right to food. The right to life and the right to health have been affected by the lack of access to obtain spare parts for life-saving drugs and equipment. Although the sectors affected are not officially under embargo, financial and transport constraints, and over-compliance by suppliers, make it impossible for the exceptions allowed by the United States to become effective. The Sudan has thus become one of the few countries in the world where people still die from diabetes, given that the drugs required to treat it are only produced by two countries, which are participating in the de facto embargo. The United States might therefore consider removing these barriers to humanitarian supplies, including medicines and food.

39. The right to health has also been affected by the lack of access to equipment for radiation treatment, which is needed in 50 per cent of cases of cancer. The standard requirement of such equipment is three to four units per million of population; with a population of 30 million, the Sudan should therefore have at least 100 units. Because of unilateral coercive measures, however, it has only eight units, of which four are not operational. Furthermore, the units currently used ("cobalt 60") have now been superseded by Linac linear treatment units, which target growths better and reduce side effects. Units

[9] Universal Declaration of Human Rights, art. 3; International Covenant on Civil and Political Rights, art. 6, para. 1.

[10] Universal Declaration of Human Rights, art. 25, para. 1; International Covenant on Economic, Social and Cultural Rights, art. 11, para. 1.

[11] International Covenant on Economic, Social and Cultural Rights, art. 11, para. 2.

[12] See general comment No. 8 (1997) of the Committee on Economic, Social and Cultural Rights on the relationship between economic sanctions and respect for economic, social and cultural rights (E/C.12/1997/8), para. 3.

of this type are nowhere to be found in the Sudan. Hardly a third of new cases of cancer can receive proper radiation treatment, either because it has been interrupted or is unavailable. At the Khartoum Radiation and Isotopes Centre, evidence was provided - corroborated also by other treatment centres - that the supply of spare parts, radiation material and technical assistance for machines purchased from European firms, subsequently taken over by United States companies, had been interrupted. Deaths resulting from the export or transfer ban of such life-saving equipment by the source country and its foreign affiliates over the period from 1997 to 2014 were estimated by the Centre to have exceeded 8,000, of which the majority were women. Like the United States Congress delegation that had visited the country previously, the Special Rapporteur expressed his amazement and admiration for the commitment shown by a Sudanese radiologist who had launched, with her own savings, a state-of-the-art centre in Khartoum breast care centre. The centre was equipped with a General Electric monogram machine, the only such machine available in the Sudan. The Special Rapporteur was informed that, for 18 months after 2013, the centre had struggled to obtain spare parts for the machine, denied by the supplier because of the embargo. Many cancer patients reportedly died owing to lack of treatment before the clearance for the delivery of the spare parts was obtained.

40. Avoidable loss of life has also resulted from the spread of malaria, bilharzia and leishmaniasis because transfers via SWIFT were not authorized to pay for the importation of drugs and vaccines, and the fact that the Sudan was not eligible to benefit from the United States President's Emergency Plan for AIDS Relief, the second-most important source of funding after the Global Fund to Fight AIDS, Tuberculosis and Malaria.

41. The right to development has been affected also, given that the importation of spare parts for basic equipment, such as for trains, airplanes and road transport vehicles is not possible. In Khartoum, 20 years ago, 40,000 minibuses were available for the population. In 2014, even though the population had increased substantially, only 12,000 minibuses remained in operation because of the lack of spare parts. The situation for tractors and pumps in the agricultural sector is similar. In fact, the general situation has been further compounded by the *freeze* on financial transfers, which has deterred foreign investment and neutralized all benefits of humanitarian exemptions. Payments cannot be made for supplies of authorized vital drugs because of foreign restrictions on currency transfers from the Sudan. After the Sudan lost a large share of oil fields when South Sudan seceded, restrictions on technical assistance and transfers further reduced oil extraction from 30 per cent of total capacity to 10 per cent. In addition, the Sudan has been unable to extract 66 per cent of new oil wells discovered for the same reasons. Given that 70 per cent of oil is used for the production of gasoline, the sanctions have had an impact on people using this fuel for transport and for other purposes.

42. The right to drinking water has been undermined. Basic water needs in the capital cannot be met owing to the breakdown of pumps drawing water from boreholes and from the Nile, and because the chemicals needed to purify water stocks are not available.

43. The right to work has been undermined by slowdowns in the productive sectors because of lack of spare parts and maintenance.

44. The right to development has also been gravely undermined. The implementation of a project for a vital coal-fired power generator with a total output of 600 megawatts for a total value of $850 million in Port Sudan is in jeopardy, which could lead to an even more acute shortfall in electricity. Little more than 34 per cent of homes benefit from access to electricity; the rate of connection to power, which increased by 22 per cent at the turn of the century, has now dropped to 5 per cent owing to lack of access to equipment, technical assistance and spare parts. Similarly, the train network, of which approximately 70 per cent of locomotives were manufactured by General Motors and General Electric, has ground to a halt because of lack of spare parts and technical assistance. Disadvantaged populations in

remote areas are thus further isolated, while the price of basic supplies, whether they be food or cement, rises. Such a situation contributes to regional tensions that current efforts are aimed at reducing. Air transport has not been spared by the embargo: the 10 aircraft of Sudan Airways, a model airline in the past, have been grounded.

45. The right to education is also in jeopardy owing to the rise in poverty, which in 2009 had reached 46 per cent of the population — largely due to the embargo on the country. The Special Rapporteur was informed that contributing factors to this situation were, first, the war in some regions; second, the lack of affordable social protection; and, failing infrastructure; and third, the loss of employment opportunities resulting from unilateral coercive measures. School drop-out rates of children up until the age of 12 years are the highest in the Arab region (between 36.5 per cent and 50.1 per cent, depending on the age subcategory) totalling in 2010 more than 3 million children.[30]

46. In university education, the freezing of exchanges and the lack of access to the range of software and modern technologies, and to participate in training abroad or even in exchanges via the Internet and subscription to scientific magazines, deprive the youth of Sudanese of the opportunity of understanding Western culture and values. The ensuing hostility will give young people in the Sudan the impression that an entire generation of innocent people is being victimized for no fault of their own.

47. The rights of the elderly are affected because of the ban on the transfer of remittances from members of their families living abroad.

48. The rights of persons with disabilities have also been affected by the substantial increase in the price of indispensable equipment, such as wheelchairs, owing to the need to circumvent restrictions by resorting to a number of intermediaries to procure said equipment.

49. Women's rights are affected in several fields, as seen in the increase in deaths of women during childbirth due to the lack of essential medical supplies.

50. The rights of the child are affected because of the lack of essential equipment, for example, incubators for premature infants.

51. The right to food has been affected by the reduction in agricultural production and productivity and in animal resources as a result of the embargo on imported production requirements. The negative impact is particularly evident in the derelict state of pumps and tractors used in farming, and the locomotives running on the rail network connecting the area to the rest of the Sudan. The situation is particularly regrettable, given that the El Gezira project could make the region the breadbasket for the whole country, and potentially for the whole of East Africa. The right to food has also been gravely undermined in the case of the food-processing plants in Kassala (a city hosting large numbers of destitute refugees, in particular from Eritrea), forced to close down because of the lack of imported spare parts. The lack of access to vaccines and drugs for livestock has also gravely affected the income of herders and other rural folk, who represent 40 per cent of the Sudanese population. The right to food of the inhabitants of the Sudan and of neighbouring States relying on Sudanese livestock has thus been undermined. In the light of these circumstances, it is regrettable that that the Sudan was not allowed to participate in the second phase of the N2Africa project, financed by the Bill and Melinda Gates Foundation and implemented by the Wageningen Institute and the International Livestock Research Institute. The project is aimed at empowering smallholder farmers and nomadic herders by supplying them with appropriate

[30] Sudan Ministry of Education, *Sudan Country Report on Out-of-School Children* (Khartoum, UNICEF, October 2014).

[31] See www.n2africa.org.

fertilizers and animal vaccines. It would have been ideal for enhancing the right to food in the Sudan, to address the malnutrition and undernutrition that have spread throughout the country.

52. In the Sudan, the poorest and most vulnerable, including women and children, have been the (unintended) casualties of unilateral coercive measures; senior officials have, by their own admission, not been affected to any serious extent. The measures are thus having an impact on the implementation of article 25, paragraph 1 of the Universal Declaration of Human Rights, and of articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.

53. The Committee on Economic, Social and Cultural Rights, in its general comment No. 8 (1997), concluded that human rights must be taken fully into account when designing an appropriate sanctions regime, that effective monitoring should be undertaken throughout the period that sanctions are in force, and that the external entity imposing the sanctions has an obligation to take steps, individually and through international assistance and cooperation, especially economic and technical, to respond to any disproportionate suffering experienced by vulnerable groups in the targeted country.

54. Any global assessment of the situation of human rights in the Sudan should be based on a two-track approach, focusing on both internal and external causes. In that regard, the Special Rapporteur makes the recommendations below.

IV. Recommendations

A. Government of the Sudan

55. The Special Rapporteur recommends that the Government of the Sudan adopt a road map to address the recommendations made by the Independent Expert on the situation of human rights in the Sudan included in his report submitted to the Human Rights Council in 2015 (A/HRC/30/60).

56. In order for the unilateral coercive measures targeting the Sudan to be lifted durably and to unleash the creative human capacities that abound in the country, it is necessary that all Sudanese leaders agree to speak with one voice at the regional and international levels. This goal is feasible; for it to be attained, the national dialogue initiated by the Government must be pursued, in accordance with the decision made by the Peace and Security Council of the African Union, at its 539th meeting, on the activities of the High-level Implementation Panel for Sudan and South Sudan, and expanded to encompass all active Sudanese political parties and movements, without exception.

57. Taking into consideration the seriousness of the impact, whether de jure or de facto, of unilateral coercive measures on the life of innocent parties (given the lack of access to life-saving drugs or procurement of spare parts for chemotherapeutic cancer treatment), the Special Rapporteur recommends that the Sudan grant access to a team of medical experts to review the situation and to propose life-saving measures that could be taken immediately (see para. 66 below).

B. Source country

58. The unilateral coercive measures targeting the Sudan should be limited in time, and be phased out in accordance with the fulfilment by the Sudan of clear objectives,

on the basis of the assessment of an appropriate mechanism similar to that of the panel of experts set up pursuant to Security Council resolutions on the Sudan to make proposals. The fact-finding mission conducted by a four-member delegation from the Congress of the United States led by Bennie Thompson in November 2015 to assess the impact of sanctions called for such a follow-up.

59. The Special Rapporteur recommends that the source country consider whether the Power Africa initiative could also include the Sudan in its scope, as it does for neighbouring Ethiopia.

60. The Special Rapporteur also recommends that exceptions or waivers approved by the source country with regard to the trade in gum arabic, agricultural produce and certain life-saving drugs, as well as for limited access to software, be fully activated. Such a measure might also be accompanied by the lifting of restrictions on the shipping of these goods and related financial transfers.

61. The Special Rapporteur further recommends that the source country consider increasing the number of exceptions to the list of banned products, for example, to include those that help to safeguard the basic rights of citizens, including the full and unabridged right to health and rights in other crucial sectors, such as agriculture, education and information technology.

62. The ban on the transfer of remittances by Sudanese residents abroad to their families in the Sudan, and on transfers by Sudanese residents to family members pursuing their education abroad should be lifted. Such a measure would be consistent with the support of the source country for the decision of the Financial Action Task Force to remove the Sudan from its watch list, and could also lead to the removal of the Sudan from the list of State sponsors of terrorism, to which it was added 23 years ago under very different circumstances.

63. Furthermore, restrictions could be progressively lifted on transfers for commercial transactions, starting with imports recognized to be crucial to ensure basic human rights.

64. The Special Rapporteur recommends that the source country consider the possibility of lifting the unilateral coercive measures taken by Executive Order, then those adopted by the legislative body.

C. United Nations system

65. The Office of the United Nations High Commissioner for Human Rights (OHCHR) should send, in consultation with WHO and the United Nations Children's Fund (UNICEF), a team of specialists comprising an oncologist, a paediatrician and an immunologist to verify the information provided by the Special Rapporteur in the present report on the devastating impact of unilateral coercive measures on health services in the Sudan. The team could in particular confirm the impact of the measures as witnessed in the rise of the death toll of cancer patients as a result of the lack of access to spare parts for the cancer detection and treatment equipment, in infant and maternal deaths as a result of lack of medication for childbearing mothers, of treatment for premature children, and of detection facilities for dangerous pandemics. The team could estimate the number of lives that could be saved by ensuring the possibility to buy, ship and pay for the supplies of key medication and spare parts related to the said areas of concern. While the goods concerned may be included in the "exceptions" list, their shipping and payment remains problematic. The Special Rapporteur calls upon OHCHR to support his recommendation that the

United Nations Development Programme be responsible for procurement of these goods paid by national funding.

66. OHCHR, assisted by the United Nations Educational, Scientific and Cultural Organization and UNICEF, should undertake a study on the dysfunctions in the educational areas in the Sudan that have had an adverse impact on the right to education and may have causes related to unilateral coercive measures, as well as internal causes. The drafting of a study on internal causes is within the mandate of the Independent Expert on the situation of human rights in the Sudan.

67. The Special Rapporteur welcomes the procurement support agreement entered into by the Government of the Sudan and the United Nations Development Programme in March 2016, under which the latter is to facilitate access to medicines by Sudanese patients by overcoming current banking-related obstacles, with a view to ensuring the channelling and payment of essential medical supplies, the capacity to fight pandemics, and the availability of spare parts for vital equipment. The Special Rapporteur is of the view that the scope of this procurement system could be progressively broadened to include other supplies authorized by United States waivers and other goods as progress is made in settling outstanding issues.

68. The Special Rapporteur also recommends that the United Nations system launch a technical cooperation initiative under OHCHR and other relevant bodies of the United Nations operating in the Sudan to develop parameters to facilitate the assessment of the separate role of unilateral coercive measures and their impact on the enjoyment of human rights, including cases where multiple causes are involved. The initiative could lead to the holding by the United Nations of an expert meeting to prepare a case study, which could be helpful in developing a methodology on impact assessment in other targeted countries.

D. Other stakeholders and the international community

69. The experience in the Sudan proves that the adverse human rights impact of unilateral coercive measures on the poorer and most vulnerable segments of the population is greater than intended by the source country, since many of the latter's humanitarian waivers remain partly ineffective because of upstream or downstream implementation hurdles or because of over-compliance by international financial institutions fearful of being exposed to major fines, as was the case for some European banks with business relations with the Sudan.

70. The Special Rapporteur recommends that an international conference be organized in Basel, Switzerland, through consultations between the Bank for International Settlements, involving also SWIFT in Belgium, and all key international banks and shipping lines interested in business relations with the Sudan, and with the Office of Foreign Assets Control of the Department of the Treasury of the United States as an observer and the involvement of the Sudanese American Business Council. The purpose of this gathering would be to investigate the full potential of the waivers and how to make them effective, as well as address the over-compliance that has unintentionally become a brake on relations between the Sudan and the outside world.

71. The Special Rapporteur recommends that other stakeholders and the international community consider the possibility of engaging international mechanisms to restructure the external debt of the Sudan, which has become unsustainable. Restructuring could even come in the form of reparations for the damage caused by unilateral coercive measures to the enjoyment by ordinary people

of their basic human rights for more than two decades, indeed, compensation for the losses caused would surely exceed the State's external debt. In this context, internal action should be taken by the target country to enhance the coordination of efforts with South Soudan, in accordance with the decision made by the Peace and Security Council of the African Union, at its 539th meeting, in which the Council recalled the support expressed by the Assembly of the Union and the endorsement by the Council of the joint approach by the Sudan, South Sudan and the High-level Implementation Panel for comprehensive debt relief, the lifting of sanctions targeting the Sudan and development support for South Sudan.

72. Experience shows that unilateral coercive measures are politically easy to impose but much harder to lift. When imposed, these measures take on a life of their own, becoming embroiled in partisan politics in the source country. In the target country, the measures promote the development of a shadow economy that thrives on smuggling, money-laundering and various forms of trafficking, all of which create a new elite intent only on perpetuating the status quo.

73. Unilateral coercive measures also tend to become disconnected from the reality that they were originally supposed to address. They become ineffective in promoting policy change aimed at strengthening human rights; in fact, they ultimately have a high cost for and the adverse impact on the enjoyment of those same human rights. In this regard, the imposition of unilateral coercive measures is ultimately a self-defeating exercise. The situation prevailing in the Sudan today is no exception.

74. The Special Rapporteur is of the opinion that there must be a better way to promote the proclaimed objective of the both the source country and the target country: the enhancement of human rights in the Sudan. Because shortcomings in this important area can be attributed to both internal causes (issues of governance) and to external ones (unilateral coercive measures), the Special Rapporteur suggests that priority be given to quiet diplomacy involving the representatives of the source and target countries, the Independent Expert on the situation of human rights in the Sudan and the Special Rapporteur on the adverse impact of unilateral coercive measures on the enjoyment of human rights, to serve as an informal testing ground to address the recommendations made above. The Special Rapporteur stands ready to assist as a facilitator in confidence-building between source and target countries, suggesting options that could broaden the area of consensus between them.